THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION NOs.6813 and 6814 of 2007

Between:

V.V.R.Patanjali.

.. PETITIONER

and

The State of Andhra Pradesh,
and others.

..
RESPONDENTS

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ORDER:

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W.P.No.6813 of 2007 has been filed to issue a Writ of Prohibition directing the 9th respondent to forbear from proceeding any further with respect to F.I.R.No.240 of 2006, dated 06-11-2006, registered by the 3rd respondent at the instance of the 8th respondent.

W.P.No.6814 of 2007 has been filed to issue a Writ of Mandamus for declaring the complaint, dated 06-11-2006, lodged by the 8th respondent with the 3rd respondent and FIR No.240 of 2006, dated 06-11-2006 filed by the 3rd respondent for the offence under Section 409 IPC and forwarding the same to the 9th respondent as illegal and arbitrary.

Both these writ petitions have been filed by the same person namely V.V.R.Patanjali, who is presently working as a Reader in the English Department in the 8th respondent college and former Secretary of Giriraj Government College Employees Co-operative Credit Society (for short "Co-operative Credit Society"). The said Co-operative Credit Society is not made as a party to these writ petitions. The petitioner made Police officials and the Co-operative Authorities and the College, in which the petitioner is working, as party respondents.

Admittedly, the 8th respondent is not a Co-operative Credit Society. Any way, the Co-operative Credit Society, whose founds have been misappropriated, is not made as a party to these writ petitions. The 8th respondent lodged a written intimation on 06-11-2006 before the 3rd respondent stating that the petitioner, who is a Lecture in English Department in the 8th respondent college, was elected as Secretary of Co-operative Credit Society in the year 1995 and

continued as Secretary for about 10 years i.e., till 2005. The elections of the Society were conducted in the month of October, 2005 and a new body was elected. While inspecting the records pertaining to the period of 2005-06, certain deficiencies have been found in respect of the assets and liabilities of the Society and the said matter was put forth before the Managing Committee and the Managing Committee observed that there is a deficit in accounts to a tune of Rs.50 lakhs. Therefore, the petitioner was asked to update the accounts and handover full charge to the present body, after rectifying the deficit or discrepancies in the accounts. But, he could not update the accounts. Due to that, the present body is unable to carry on the activities/financial transactions of the Society from 17-03-2006. The deficit funds were also shown to the petitioner by the present body and the petitioner agreed to the amount of deficit shown in the statement. He has given two cheques to a tune of Rs.5,00,000/- each to clear part of the dues, but those cheques were subsequently bounced on their presentation. The said matter was brought to the notice of the Commissioner of College Education on 06-06-2006 and the Commissioner of College Education instructed the Principal to take appropriate criminal action. Accordingly, the 8th respondent lodged the said criminal complaint.

It is further stated that as per the Audit Report for the years 2003-04, 2004-05, 2005-06, the total misappropriated funds are about Rs.54,84,855/-. The petitioner is absconding from duty from 03-10-2006 onwards. Basing on the said written intimation, the 3rd respondent registered the said FIR.

The learned counsel for the petitioner stated that the petitioner has cleared the deficit funds pertaining to the years 2003-04 and 2004-

05 and he has to update deficit funds for the year 2005-06 alone and he is prepared to clear entire deficit funds, if, ultimately, during the course of enquiry conducted by the Co-operative Audit Department, it is found that the petitioner is due to pay the amount, if any to the Society.

It is further stated that as per Section 83(1) of A.P.Co-operative Societies Act, 1964, (for short "the Act") no court inferior to that of a Magistrate of the first class or Metropolitan Magistrate shall try any offence under this Act.

As per Section 83(2) of the Act, every offence under this Act shall, for the purpose of the Code of Criminal Procedure, 1973, be deemed to be cognizable.

As per Section 83(3) of the Act, no prosecution shall be instituted under this Act without the previous sanction of the Registrar.

The criminal prosecution launched against the petitioner is not under the provisions of Co-operative Societies Act. The provisions of the Act make it clear that in case of prosecution in respect of certain offences i.e., under Sections 79 to 83 of the Act, the provisions of Section 83(iii) will be applicable, but not for the offences punishable under Indian Penal Code. The criminal prosecution launched against the petitioner is for the offence under Section 409 IPC i.e., criminal breach of trust.

The proceedings under the relevant provisions of the Co-operative Societies Act and the Indian Penal Code, are distinct and different and thereby, separate proceedings can be initiated.

In fact, the petitioner earlier filed Crl.P.No.1228 of 2007 to quash the said FIR No.240 of 2006, dated 06-11-2006, on the file of the 3rd

respondent. This court through order, dated 01-03-2007, dismissed Crl.P.No.1228 of 2007.

The order dated 01-03-2007 in Crl.P.No.1228 of 2007 reads as follows:-

> " The petitioner is an accused in Cr.No.240 of 2006 on the file of the Station House Officer, III-Town Police Station, Nizamabad, registered for the offence punishable under Section 409 of the Indian Penal Code.
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> A complaint was preferred by the Principal of Giriraj Government College, Nizamabad, alleging that the petitioner, being the Secretary of Giriraj College Employees Co-operative Credit Society Limited, Nizamabad, misappropriated an amount of Rs.58,84,000/-, therefore, he is liable for prosecution for the offence punishable under Section 409 IPC.
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> The learned counsel for the petitioner contends that a letter was given by the Principal and President of the said College to the District Co-operative Officer, Nizamabad on 02-05-2006 to the effect that the petitioner cleared the entire amount, therefore, the impugned proceedings against him are liable to be quashed.
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> It is a question to be considered during the course of trial whether subsequent clearance of the amount would exonerate the petitioner from the prosecution under Section 409 IPC.
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> The learned counsel for the petitioner further contends that a sanction was supposed to be given by the Registrar of Co-operative Societies under Section 83(3) of the Andhra Pradesh Co-operative Societies Act, 1964.
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> However, there is a transaction given by the Director of Collegiate Education. It is a matter to be considered whether the person, who granted sanction is the competent authority to launch the prosecution against the petitioner. At this stage, it is not possible to decide the competency or otherwise of the authority who granted sanction to prosecute the petitioner. In the light of the above circumstances, I do not find any ground to quash the proceedings.
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> Accordingly, the Criminal Petition is dismissed."

In view of the aforesaid dismissal of the criminal petition and in view of the self same relief now sought for in the present writ petitions and

in view of the prosecution of the petitioner under the provisions of the Indian Penal Code, I am of the opinion that no prior prosecution sanction of the Registrar of the Societies as contemplated under the provisions of section 83 (3) of the Act, is required to the present facts of the case on hand.

In view of the aforesaid facts and circumstances of the case, the writ petitions are not maintainable and they are liable to be dismissed.

Accordingly, the writ petitions are dismissed. There shall be no order as to costs.

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10-04-2007

Prv